IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 329 OF 2007

M/s.City Maker Builders and
Developers Pvt.Ltd. ... Appellants.

Versus.

Mrs.Kesari Khan d/o.Mujaffar Khan. ... Respondents.

Shri Chirag Balsara i/by Shri Deepak J.Lulia for the Appellants.

CORAM : ABHAY S.OKA, J.

DATED : 21st April, 2007.

P.C.:

1. Heard the learned Counsel appearing for the Appellants/Defendants. The challenge is to the ad-interim order dated 17th April 2007 passed by the learned Judge of the City Civil Court at Bombay by which ad-interim relief in terms of prayer clause (a) of the Notice of Motion has been granted. The effect of prayer clause (a) is that the suit structures have been protected from demolition save and except by due process of law.

2. The grievance of the learned Counsel for the Appellants is that all the documents relating to the sanction of the SRA Scheme were filed along with the reply filed by the Appellants but the learned trial Judge has not at all considered any of the documents. He submits that the Respondent/Plaintiff is not occupying the suit structures and the same are in possession of other persons. He submitted that the

entire SRA Scheme has been stalled as a result of grant of ad-interim relief.

3. I have considered the submissions. As of today there is nothing on record to show that any proceedings have been initiated for demolition of the suit structures by taking recourse to appropriate provisions of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. Whether the original Plaintiff is in possession of the structures is a question to be decided at the time of hearing of the pending Notice of Motion. Without there being any material on record as of today to show that any proceedings have been initiated in accordance with the law for demolition of the suit structures, I find no error with the view taken by the learned trial Judge.

4. It is true that the grant of ad-interim relief will affect the implementation of the slum rehabilitation scheme. Therefore, the trial Court will have to decide the Notice of Motion within a time frame fixed by this Court. For some reason, if the Notice of Motion cannot be decided within the time frame, it will be open for the Appellants to apply under Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 for variation of the ad-interim relief.

5. Hence the following order is passed;

(i) The Appeal is dismissed with no order as to costs.

(ii) The trial Court is directed to finally decide the Notice of Motion as expeditiously as possible and preferably before the end of June 2007.

(iii) In the event the Notice of Motion is not disposed of within the stipulated time, it will be open for the Appellants to take out appropriate proceedings for variation of the ad-interim order by placing reliance on various documents, which are annexed to the Memorandum of Appeal.

(iv) All contentions on merits are expressly kept open and the Notice of Motion will be decided on its own merits without being influenced by the confirmation of the ad-interim order by this Court.

(v) Parties and the concerned Court to act on an authenticated copy of this order.

Judge.